

## THIS MUST BE COORDINATED WITH HQ COMMUNICATIONS STRATEGY



**Action:** Rosemont Copper Mine EIS Referral to CEQ

**Action Date:** .....

**Level of Public Interest:** High

**Project Location:** 4,740 acres of National Forest, privately owned, and Arizona State Trust lands, located approximately 30 miles southeast of Tucson, in Pima County, Arizona. The primary land holding is the Coronado National Forest Lands (3,670 acres).

**Action Description:** EPA will refer the Rosemont Copper Mine EIS to the Council on Environmental Quality on XX, 2014. EPA Administrator will send a CEQ Referral Package to CEQ Chair Nancy Sutley, and a Lead Agency Referral Package to Secretary of Agriculture Tom Vilsack.

### ***EPA Points of Contact***

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### ***Project Description and Background***

**Recent Project History:** The U.S. Forest Service has published the Rosemont Mine Project Final EIS. Most sections of the document have been significantly revised since the Draft EIS, including changes that address some of EPA's concerns from the Draft EIS. EPA notes significant improvement to most sections. However, the FEIS still discloses significant adverse impacts. Of particular concern are those related to groundwater and surface water quantity, aquatic and riparian resources, biological impacts, tribal/cultural impacts, and air quality. The project will result in the direct fill of ~40 acres of waters of the U.S., and mitigation proposed to-date for this direct impact is inadequate. The project will also indirectly affect hundreds of acres of off-site waters, including likely jurisdictional wetlands; however, no mitigation is proposed.

[PAGE ]

The project area is home to 10 threatened or endangered species, including the only known jaguar in the United States. Although the USFWS did not determine jeopardy for any of these species, their populations and habitat would be adversely affected. The air quality analysis indicates impacts exceeding various non-statutory thresholds for visibility, nitrogen deposition and particulate emissions. The project continues to include immitigable impacts to Tohono O'Odham sacred springs and burial sites.

**Previous Formal NEPA Actions:** On February 21, 2012 EPA rated the Draft EIS "EU-3," in part due to the Draft EIS's conclusions that the project would likely violate the Clean Air Act and Clean Water Act. Our rating suggested a supplemental or revised Draft EIS should have been published. On August 15, 2013, EPA submitted comments on the Administrative Final EIS, reiterating many of our previous comments and further focusing in on the areas of greatest outstanding disagreement.

**Previous Formal CWA §404 Actions:** EPA sent to the U.S. Army Corps of Engineers ARNI letters on January 5 and 13, 2012, a technical review of Rosemont's draft Mitigation and Monitoring Plan on January 25, 2013, supplemental comments on a revised §404 Alternatives Analysis on March 12, 2013, and comments on an updated Compensatory Mitigation Plan on November 7, 2013. The mitigation proposals are based on a flawed assessment of impacts, and do not meet mitigation rule requirements, even for direct fill impacts. The Corps is a cooperating agency seeking to adopt the Forest Service's Record of Decision for its CWA §404 permit decision.

#### **EPA's Specific Concerns regarding the Final EIS:**

- The project would result in significant degradation of waters of the United States in violation of 40 CFR 230.10(b), (c) and (d) of the *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* ("Guidelines"), including three types of Special Aquatic Sites (wetlands, sanctuaries and refuges, and riffle and pool complexes), as well as Tier 3 "unique waters" designated by the State of Arizona as "Outstanding Arizona Waters." EPA has also identified these waters as "Aquatic Resources of National Importance."
- Direct impacts from the proposed project include fill of ~40 acres of waters of the U.S., for which inadequate compensatory mitigation has been proposed. Indirect impacts have not been adequately assessed; however, EPA estimates that groundwater drawdown will result in the destruction of hundreds of acres of seep, spring and riparian habitats. No mitigation is proposed for these impacts. Direct and indirect loss of waters of the U.S. would endure for hundreds of years and, in some cases, in perpetuity.
- The project would result in exceedance of non-statutory thresholds for both visibility and nitrogen deposition for Class I areas, particularly Saguaro National Park and Galiuro Wilderness Area. The Forest Service proposes only to "discuss with the Park Service the potential for additional mitigation."
- The project would have severe unmitigated impacts on tribal resources. A number of tribal groups, particularly the Tohono O'odham Nation, are opposed to the project.
- Those alternatives that continue to include the heap leach facility (all alternatives except for the preferred) may require long term financial assurances for managing this facility after closure.

#### **Key Stakeholders**

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US Forest Service  
US Army Corps of Engineers  
US Fish and Wildlife Service  
National Parks Service  
Bureau of Land Management  
Arizona Department of Environmental Protection  
Pima County  
Tohono O'odham Nation

**Congressional/Political Interest** – According to Rosemont Copper, this project will provide jobs and a cumulative positive economic impact to the local economy. This statement has been disputed by local government and NGOs. Congressman Ron Barber (D, Tucson area) has publicly stated concern regarding the project, including a request that the Forest Service complete a new Draft EIS for the project to better disclose project impacts to the public and incorporate project design changes. Congressman Raul Grijalva (D, Tucson area) has publicly stated opposition. Pima and Santa Cruz Counties have both come out in very strong opposition to the project. Senators McCain and Kyl have not publicly expressed an opinion.

## ***Media Strategy***

EPA plans to.....

### **Talking Points**

- **NEPA** is our country's basic national charter for environmental responsibility. It requires federal agencies to evaluate and publicly disclose the environmental impacts of major federal actions. Section 309 of the Clean Air Act requires EPA to review and publicly comment on the environmental impacts of all major federal actions, such as the Forest Service's proposed approval of a plan of operations for Rosemont Copper Mine. EPA's NEPA/309 review identified significant environmental concerns associated with water quality, air quality, tribal cultural resources, and health and safety. If the project is unsatisfactory from the standpoint of public health or welfare or environmental quality, CAA section 309 directs EPA to refer the matter to the Council on Environmental Quality.
- **Section 404 of the Clean Water Act** - The proposed project would directly eliminate ~40 acres of waters of the U.S. and indirectly eliminate hundreds of acres of seep, spring and riparian habitats. These impacts, which in many cases would be permanent, would not be adequately mitigated.
- **Water quality impacts to Outstanding Waters** - EPA believes the proposed project would result in significant adverse impacts to onsite and downstream waters. Davidson Canyon Wash and Cienega Creek, downstream of the project site, are designated as "Outstanding Waters" by the State of Arizona under Arizona Administrative Code R18-11-112. This designation means that, under Section 303 of the Clean Water Act (CWA) and regulations at 40 CFR 131.12, both Davidson Canyon Wash and Cienega Creek must be afforded the

[PAGE ]

highest level of protection, and that no degradation or water quality is allowable.

- **Air quality standards** - The project would result in exceedance of non-statutory thresholds for both visibility and nitrogen deposition for Class I areas, particularly Saguaro National Park and Galiuro Wilderness Area. The Forest Service proposes only to “discuss with the Park Service the potential for additional mitigation.”
- **Impacts to Tribal resources/environmental justice** - The proposed project would have severe, irretrievable and largely unmitigated impacts upon tribal and cultural resources, particularly those of the Tohono O’odham Nation, including the loss of 111 National Register of Historic Places eligible historic properties, approximately one third of which are known or likely to have human remains. The Tohono O’odham have expressed strong opposition to the proposed development.
- **Endangered species** - Direct and indirect impacts to biological resources are anticipated to occur on 6,461 acres and 145,190 acres, respectively, as a consequence of the proposed project. Ten federally listed endangered or threatened species (e.g., Mexican spotted owl, Gila topminnow, Gila chub, Ocelot, Chiricahua leopard frog, Lesser long-nosed bat, Southwestern willow flycatcher, Jaguar, and [1 more??]) are known to occur within or adjacent to the analysis area for which impacts are reasonably foreseeable.

## Q&A

### Q. What is EPA’s role in reviewing the Final EIS?

A. Under Section 309 of the Clean Air Act, EPA is required to review and publicly comment on the environmental impacts of all major federal actions. EPA’s comments on the Rosemont Draft EIS are part of the public record and were posted on EPA’s website. EPA rated the Rosemont Draft EIS as “Environmentally Unsatisfactory – Inadequate.” Since that time, we have been working with the USFS, US Army Corps of Engineers and Rosemont Copper Company to work through the many issues we identified. The Final EIS does not satisfactorily resolve the critical issues identified in our Draft EIS comments; therefore, we are referring the matter to CEQ for consideration.

### Q. What is EPA’s role in reviewing the CWA 404 permit, and can EPA prevent its issuance?

A. Section 404 of the Clean Water Act requires a permit from the U.S. Army Corps of Engineers for the discharge of dredged or fill material into the waters of the U.S., including wetlands. The EPA and the Corps use the 1987 Corps of Engineers Wetlands Delineation Manual to define waters of the U.S. for the Clean Water Act Section 404 permit program. If we cannot resolve our environmental concerns with the Corps at a regional level, EPA has the right to seek a higher level of review of the proposed permit under CWA 404(q). EPA also has “veto” authority under CWA 404(c).

### Q. Why is EPA trying to stop or delay this mine?

A. EPA’s role in the NEPA process is to assess whether all potential environmental impacts of the project have been adequately analyzed and disclosed to the public and decision-makers so that informed decisions can be made about future project actions. In addition, we have a shared

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obligation with the Army Corps of Engineers to ensure that the project complies with the requirements and guidelines associated with Clean Water Act Section 404. The information and analysis we have seen to date does not provide sufficient certainty that the project would do this because the project's significant environmental impacts would not be adequately mitigated. Our interest is not in stopping or slowing the development, rather in ensuring that it will comply with all applicable laws and regulations.

**Q. How long will this referral process take?**

A. The Forest Service will have 25 days to respond to CEQ and EPA, unless they get an extension from CEQ. CEQ will then have 25 days to decide upon an action, such as publishing its findings and recommendations or referring it to the President. Some actions, such as mediation or holding public hearings, may take up to 60 days.

**Q. What is an ARNI?**

A. ARNI stands for "aquatic resource of national importance." This term is only used in the dispute resolution agreement (404(q) MOA) between the Corps and EPA describing processes for higher level review of local Corps permitting decisions. "ARNI" ensures that permit actions nominated for this higher review are limited to those actions that have potentially significant environmental impacts of national concern.

**Q. What is an "outstanding water?"**

A. "Outstanding Waters" is a designation under the Clean Water Act that a state can make for exceptional aquatic resources that meet or exceed existing state water quality standards. Once given this designation, these water bodies must be afforded the highest level of protection, with no degradation or water quality allowed.

## ***Outreach Timeline/Rollout***

### **Congressional Notification**

House and Senate members from Arizona were provided copies of the 404(q) letters in February, 2012. Copies of the CEQ Referral Package will be sent to Congressional members on [DATE]. They will be briefed on [DATE].

### **Public Notification**

This project has been followed closely by local media, notably Tucson's only daily newspaper, the Arizona Daily Star (circulation: 113,000/day). Tony Davis, the paper's environmental reporter, has covered the topic extensively. OPA proposes Davis be given an embargoed exclusive interview on [DATE] with Carter Jessop and one senior EPA employee. The story would run [DATE]. On that day, OPA will facilitate follow up interviews.



## DISTRIBUTION OF REFERRAL PACKAGE AND COPIES

DATE/TIME	STAKEHOLDER	PHONE/EMAIL	EPA CONTACT
<b>DATE</b> <b>3:00 pm EST</b>	CEQ Chair - Nancy Sutley	HAND CARRY	EPA HQ - OFA
<b>DATE</b> <b>3:00 pm EST</b>	Agriculture Secretary - Tom Vilsack	HAND CARRY	EPA HQ - OFA
<b>DATE</b> <b>Noon PST</b>	US Forest Service - Forest Supervisor, Jim Upchurch	520-388-8306	Kathleen Johnson
<b>DATE</b> <b>3:00 pm PST</b>	US Army Corps of Engineers, LA District – Colonel Kim Colloton	???	Jane Diamond?
<b>DATE</b> <b>3:00 pm PST</b>	ADEQ - Director, Henry Darwin Air - Eric Massey, Division Director Water- Michael Fulton	<a href="mailto:hrd@azdeq.gov">hrd@azdeq.gov</a> ; 602-771-2204 <a href="mailto:ecm@azdeq.gov">ecm@azdeq.gov</a> ; 602-771-2308 <a href="mailto:fulton.michael@azdeq.gov">fulton.michael@azdeq.gov</a> ; 602-7712303	Colleen McKaughan  Laura Bose will notify Water
<b>DATE</b> <b>3:00 pm PST</b>	US Fish and Wildlife Service - Field Supervisor, Steven Spangle	602-242-0210	Lisa Hanf
<b>DATE</b> <b>3:00 pm PST</b>	Bureau of Land Management - Tucson Field Manager, Brian Bellew	520-258-7200	Lisa Hanf
<b>DATE</b> <b>3:00 pm PST</b>	Pima County - County Administrator, C.H. Huckleberry	520-740-8661	Kathleen Johnson
<b>DATE</b> <b>3:00 pm PST</b>	Pima County DEQ - Director, Ursula Kramer	<a href="mailto:Ursula.Kramer@deq.pima.gov">Ursula.Kramer@deq.pima.gov</a> ; 520-243-7454	Colleen McKaughan
<b>DATE</b> <b>3:00 pm PST</b>	Tohono O'odham Nation Chairman, Ned Norris, Jr.	520-383-2028	Kathleen Johnson
<b>DATE</b> <b>3:00 pm PST</b>	Congress members Ron Barber John McCain Others??	???	Brent Maier

## ***Project Leads***

### **Program Leads:**

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WTR-1: Laura Bose, 2-3477

WTR-8: Jason Brush, 2-3483

AIR: Colleen McKaughan, 520-498-0118

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